

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GARY METZGAR, RICHARD MUELLER,
SHERWOOD NOBLE, DANIEL O'CALLAGHAN,
CHARLES PUGLIA, KEVIN REAGAN, and
RONALD REAGAN,

Plaintiffs,

v.

U.A. PLUMBERS & STEAMFITTERS LOCAL 22
PENSION FUND, BOARD OF TRUSTEES
U.A. PLUMBERS & STEAMFITTERS
LOCAL 22 PENSION FUND and
DEBRA KORPOLINSKI, in her capacity as
Plan Administrator for the U.A. PLUMBERS &
STEAMFITTERS LOCAL 22 PENSION FUND

Defendants

ATTORNEY
AFFIRMATION
IN SUPPORT OF
AWARD FOR
ATTORNEYS' FEES

Civil No.: 13-cv-85 (LIV-
LGF)

I, Matthew K. Pelkey, Esq., an attorney duly admitted to practice before this Court,

hereby affirm under penalties of perjury as follows:

1. I am a Partner at Colligan Law LLP, co-counsel for the Plaintiffs in this matter, and as such, I am fully familiar with the procedural and factual history of this case.

2. I submit this affirmation in support of Plaintiffs' application for attorneys' fees in response to this Court's Decision and Order of November 20, 2018 (Docket No. 135), wherein this Court granted Plaintiffs' request for proportionate expenses, pursuant to Rule 37(a)(5)(A), associated with Plaintiffs' partially successful Motion to Compel (Docket No. 86). This Court further directed that the award be paid by Defendants' counsel, whose conduct necessitated Plaintiffs' motion. (*See* Docket No. 135, p. 6-7).

3. Colligan Law LLP is a full-service law firm that focuses its practice on, *inter alia*, labor and employment law and complex litigation, including Employment Retirement

Income Security Act (“ERISA”) matters, such as the instant lawsuit.

4. I was admitted to the practice of law in the State of New York in March 2011, after graduating *cum laude* from the University at Buffalo Law School, with a finance transactions concentration. Since my admission to practice, I have handled numerous complex civil litigation matters, including cases under federal employment law. I am also well-versed in finance transactions and investor finance including formation and compliance of investment funds. My billing rate on this motion to compel was \$320.00/hour for work performed in 2017 and \$325.00/hour for work performed in 2018. I respectfully submit that this rate is within the range of reasonableness for federal court litigation of this nature, by experienced counsel, and it is the standard rate charged for my services at Colligan Law LLP.

5. A. Nicholas Falkides, previously Special Counsel at Colligan Law LLP, also devoted considerable time to this case. Mr. Falkides is a seasoned litigator and was admitted to practice in New York in 1994, after his graduation from the University of Pennsylvania Law School. Mr. Falkides’ billing rate on this motion to compel was \$300.00/hour for work performed in 2017 and \$305.00/hour for work performed in 2018. I respectfully submit that this rate is within the range of reasonableness for federal court litigation of this nature, by experienced counsel, and it is the standard rate charged for Mr. Falkides’ services at Colligan Law LLP.

6. Additional work on this matter was performed by Associate Robert Townsley and Law Clerk Christina Kennedy. Mr. Townsley billed at a rate of \$200.00 per hour and Ms. Kennedy billed at a rate of \$95.00 per hour. Associate Kevin T. O’Brien performed approximately an hour of work on this matter at a rate of \$255.00 per hour. I respectfully submit that these rates are the standard rates charged for such services at Colligan Law LLP and are within the range of reasonableness for litigation of this nature.

7. Plaintiffs incurred \$18,031.50 in attorneys' fees in connection with the instant motion to compel over ___ months. This amount of work was necessary due to Defendants' repeated failure to comply with Plaintiffs' discovery demands and the contested nature of the related motion practice. Defendants' action further required Plaintiffs' counsel to research and draft the motion to compel, prepare the reply to Defendants' opposition, and appear in court to orally argue Plaintiffs' position. Furthermore, there was a great deal of negotiations between counsel while the motion was pending.

8. As part of this request for fees, we have reduced the amount we are requesting by 30% to account for Plaintiffs' partial success on the motion as well as accounting for normal write-downs we would ordinarily credit to the client. As a result, the total amount of fees we are seeking is \$12,622.05.

9. Attached as Exhibit A is our complete billing invoice for this motion, with limited redactions for privileged portions of time entries. This invoice was generated by PC Law attorney software and our billing department.

10. The entries reflected in Exhibit A are derived from the PC Law program used by Colligan Law, LLP. Attorneys record the time they expend on each task contemporaneously with the time expended. By way of example, whenever the undersigned performed services in connection with this case, I promptly thereafter described the services on the PC Law system by personally typing in the information. I also set forth the amount of time devoted to each service provided to my client. The other persons at Colligan Law, LLP who worked on this matter informed me that they likewise entered their billing entries in the PC Law program for services rendered on this matter.

11. The undersigned deponent respectfully submits that all of the services contained

in Exhibit A were reasonably necessary to secure the favorable result with respect to Plaintiffs' motion to compel.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants' for \$12,622.05 in attorneys' fees and costs.

I affirm under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Buffalo, New York
December 19, 2018

s/Matthew K. Pelkey
Matthew K. Pelkey, Esq.

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